

UNITED STATES OF AMERICA :
 : 3:17-CR-00258
 : (Judge Mariani)
 v. :
 :
 LARRY GILLIAM :

The United States of America, by and through counsel, UNITED STATES ATTORNEY DAVID J. FREED, and Todd K. Hinkley, Assistant United States Attorney, respectfully requests this Honorable Court reconsider the Court's Order and Memorandum Opinion dated August 7, 2020. Doc. 103.

The defendant, Larry Gilliam filed a Motion to Suppress Physical Evidence on June 4, 2018. Doc. 36. The same was accompanied by a brief in support. Doc. 37. Thereafter on July 18, 2018, the Government responded by filing a brief in opposition. Doc. 40. Gilliam filed a reply to the brief in opposition, and by Order dated November 9, 2018, the Court directed Gilliam to file a supplemental brief in support of his motion to specifically address his request for a hearing pursuant to

Franks v. Delaware, 438 U.S. 154 (1978). Doc. 42. Gilliam complied on December 7, 2018. Doc. 45. The Government filed a brief in opposition on March 27, 2019. Doc. 53.

A suppression hearing was held July 23, 2019, at the conclusion of which the Court requested counsel file supplemental briefs within 28 days of the publication of the suppression hearing transcript. The parties thereafter filed supplemental briefs, the Government on October 7, 2019 (Doc. 96), and in response the defense on November 4, 2019 (Doc. 102).

The Court issued an order granting the defendant's Motion to Suppress on August 7, 2020, (Doc. 104) accompanied by a Memorandum of Opinion (Doc. 103).

Motion for Reconsideration

As more particularly described in the accompanying brief in support, the Government respectfully moves the Court to reconsider its decision, citing clear error of law or fact:

- A. Contrary to the finding of the Court, the Government provided specific argument, based on evidence in the record to support the proposition that adult individuals living in a house where a dangerous drug may be present gives rise to a "true emergency" in Fourth Amendment Terms.

B. The Court's credibility findings and determination that Government law enforcement witnesses were "less than credible" is unsupported by the record, and overlooks evidence to the contrary.

C. The Court's determination that the affidavit of probable cause to search the residence was misleading due to material omissions is not supported by the record.

Wherefore the Government respectfully requests this Honorable Court reconsider its ruling that the police officers' belief that an exigency existed was not reasonable, and reverse its ruling that suppressed the evidence seized from the residence.

Respectfully submitted,

DAVID J. FREED
United States Attorney

/s/ Todd K. Hinkley
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of August 2020, I caused the foregoing

GOVERNMENT'S MOTION FOR RECONSIDERATION

was electronically filed, and served via ECF on Counsel for the Defendant, Elliot A. Smith, Esquire.

/s/ Todd K. Hinkley

Todd K. Hinkley

Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	NO. 3:CR-17-258
	:	
v.	:	(JUDGE MARIANI)
	:	
LARRY GILLIAM,	:	(ELECTRONICALLY FILED)
Defendant	:	

CERTIFICATE OF NON-CONCURRENCE

I, Todd K. Hinkley, hereby certify that Elliot A. Smith, Esquire, counsel for defendant does not concur in the within Motion For Reconsideration.

Date: August 21, 2020

/s/ Todd K. Hinkley
Todd K. Hinkley
Assistant United States Attorney